

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket No. 94-102
To Ensure Compatibility with	)	
Enhanced 911 Emergency Calling Systems	)	
	)	
Amendment of Parts 2 and 25 to Implement the	)	IB Docket No. 99-67
Global Mobile Personal Communications by	)	
Satellite (GMPPCS) Memorandum of	)	
Understanding and Arrangements.	)	
_____	)	

**SPRINT COMMENTS**

Sprint Corporation, on behalf of its local, long distance and wireless divisions ("Sprint"), submits these comments in response to the *Further Notice of Proposed Rulemaking* ("*Further NPRM*") in the above referenced proceeding regarding the application of 911 capabilities to certain services and devices.<sup>1</sup>

**I. INTRODUCTION**

The Commission seeks comment on whether "particular voice services and devices should be required to comply with our basic or enhanced 911 rules."<sup>2</sup> As a general matter, Sprint agrees that the extension of 911 and E911 services will benefit public safety. For this reason, Sprint supports the application of 911 and enhanced 911 rules to Mobile Satellite Service ("MSS") providers and CMRS resellers. Sprint respectfully reminds the Commission, however, that no wireless carrier can unilaterally control the implementation of E911 services or the development of technology. The Commission must accept that technical and other circumstances

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<sup>1</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Further Notice of Proposed Rulemaking*, FCC 02-326 (Dec. 20, 2002) ("*Further NPRM*").

<sup>2</sup> *Id.* at ¶ 16.

may impact the deployment of services or the circumstances in which 911 services will be made available, particularly where new and innovative devices are developed. While the Commission should continue to pursue its goal of increased public safety, it must use common sense guidelines that acknowledge the complexities surrounding wireless E911 service and the need to permit technical innovations in the future.

## **II. MOBILE SATELLITE SERVICES**

Mobile Satellite Service ("MSS") providers have, to date, been exempted from the 911 and enhanced 911 requirements imposed on their terrestrial based counterparts.<sup>3</sup> Both in the interest of public safety and competitive neutrality, Sprint agrees that it is now time for these CMRS carriers to comply with this important public safety regulation. In supporting the imposition of this requirement, however, Sprint does not suggest that the Commission should ignore the technical impediments to implementation of this service. Sprint is well aware of the complexity of developing and deploying wireless E911 service. Sprint submits, however, that the time has come for the MSS service providers to begin the work of development and deployment of this service.

The Commission recently granted MSS providers an Ancillary Terrestrial Component to their licenses, permitting them to directly compete with traditional CMRS carriers.<sup>4</sup> In light of the Commission's ruling, it is important that the Commission apply its regulatory burdens in a competitively neutral manner. While Sprint is sympathetic to the technical hurdles and significant expense associated with the 911 rules, the Commission has largely rejected such considerations in the context of traditional CMRS carriers. Public safety concerns have driven the Com-

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<sup>3</sup> See *2GHz MSS Service Rules Order*, 15 FCC Rcd at 16185 ¶ 125.

<sup>4</sup> See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers*, IB Docket No. 01-185, *Review of the Spectrum Sharing Plan among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems*, IB Docket No. 02-364, *Report and Order*, FCC 03-15 (Feb. 10, 2003).

mission to impose extremely aggressive deployment deadlines and accuracy requirements on terrestrial CMRS carriers. In order to maintain a competitively neutral position, the Commission has no choice but to now apply the same obligations on MSS providers.

In the *Further NPRM*, the Commission articulates several possible arguments MSS providers may raise in an attempt to avoid the regulatory burdens associated with the E911 mandate. For example, the Commission notes that modifying the satellite network infrastructure to accommodate enhanced emergency call information would require network modifications to forward ANI and ALI “such as retrofitting switches throughout the network and making costly private trunking arrangements between earth stations and PSAPs.”<sup>5</sup> Likewise, the Commission observed that PSAPs would need to make modifications to their equipment in order to receive E911 call data from a satellite network and that there is uncertainty whether the PSAPs have begun making these modifications.<sup>6</sup> Finally, the Commission notes that adding GPS chipsets to satellite handsets would be expensive, adding as much as \$30 to the cost of a handset,<sup>7</sup> and potentially adding to the weight and size of these handsets.<sup>8</sup>

While Sprint is sensitive to these issues of cost and technical feasibility, and agrees that the development of technology is generally not within a carrier’s control, the Commission rejected identical arguments made by terrestrial CMRS carriers in the original 94-102 proceeding. The Commission imposed E911 requirements on terrestrial based CMRS providers before a technical solution for locating end users even existed. Sprint was required to upgrade and modify each of its more than 100 switches across the United States. Sprint was further required to establish private trunking arrangements (through a third party vendor) with each of the PSAP

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<sup>5</sup> *Further NPRM* ¶ 30.

<sup>6</sup> *Id.* at ¶ 32.

<sup>7</sup> *Id.* at ¶ 37.

<sup>8</sup> *Id.* at ¶ 41.

ALI databases. Finally, Sprint modified its handsets to include GPS enabled chipsets, despite the significant additional expense associated with this technology and concerns that GPS technology would require larger and heavier handsets. All of this was required even though PSAPs were (and continue to be) generally unable to receive or process Phase II location information.

MSS providers will undoubtedly also face significant technical and financial hurdles in the development and implementation of enhanced 911 service. For this very reason, the Commission should ensure that the carriers begin work on development and deployment now. Despite the fledgling state of the wireless industry in 1996, the Commission imposed Phase I and II 911 obligations on all traditional CMRS providers. It is now estimated that compliance with this mandate will cost the wireless industry in the billions of dollars. It would be inequitable on its face for the Commission to hold MSS service providers to a lesser standard. Such action would grant an unreasonable competitive advantage to a specific segment of CMRS providers and would amount to unjustifiable discrimination.

### **III. RESALE SERVICE**

#### **A. RESELLERS SHOULD BE REQUIRED TO COMPLY WITH THE 911 AND E911 REQUIREMENTS**

The Commission asks whether it should impose 911 and E911 requirements on resellers, which include certain providers of pre-paid services.<sup>9</sup> As with MSS providers, Sprint agrees that that existing law and policy requires the imposition of 911 and enhanced 911 services on resellers. Again, however, the Commission must acknowledge that this is a new requirement and establish reasonable timeframes within which resellers must comply with this new mandate.

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<sup>9</sup> *Further NPRM* at ¶¶ 92, 94 and 98.

Resellers of commercial mobile radio service ("CMRS") licensees are also classified as CMRS providers.<sup>10</sup> Congress created the CMRS regulatory classification in the Omnibus Budget Reconciliation Act of 1993 largely to achieve "regulatory symmetry," thereby "ensur[ing] that similar services would be subject to consistent regulatory classification":

The Conference Report explains that the intent of Congress is that, "consistent with the public interest, similar services are accorded similar regulatory treatment." . . . By establishing a new class of commercial mobile radio services, Congress has taken a comprehensive and definitive action to achieve regulatory symmetry in the classification of mobile services.<sup>11</sup>

As the Commission has recognized, Congress adopted its "regulatory parity" directive to "ensure that consumer demand, not regulatory decree, dictates the course of the mobile services marketplace."<sup>12</sup>

There is no basis in law or policy to exclude CMRS resellers from 911 and E911 obligations. "Customers of these public [mobile] telephone services," the Commission has held, "clearly expect access to 911 and E911."<sup>13</sup> These customer expectations do not vary depending on whether the service provider is a licensee or a reseller. Indeed, many reseller customers are unaware that their service provider resells service operated by another company. But regardless of the expectations of reseller customers, the fact remains that under the regulatory parity directive, the Commission is required to treat all CMRS carriers alike, unless there are compelling reasons to discriminate among CMRS providers (and such reasons do not exist here).

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<sup>10</sup> See, e.g., *Second CMRS Order*, 9 FCC Rcd 1411, 1425 ¶ 37 (1994). Under the Communications Act, CMRS providers are deemed common carriers and as a result, are subject to the requirements in Title II to the Act. See 47 U.S.C. § 332(c)(1)(A). See, e.g., *Resale and Shared Use of Common Carrier Services*, 62 F.C.C.2d 588, 600 ¶ 20 (1977) ("Resale carriers . . . are equally subject to the requirements of Title II of the Communications Act."); *800 Presubscription Rules*, 8 FCC Rcd 7315, 7317 n.23 (1993) ("[A]s common carriers, resellers must comply with Title II of the Communications Act.").

<sup>11</sup> *Second CMRS Order*, 9 FCC Rcd at 1418 ¶ 13.

<sup>12</sup> *Third CMRS Order*, 9 FCC Rcd 7988, 7992 ¶ 1 (1994).

<sup>13</sup> *First E911 Order*, 11 FCC Rcd 18676, 18716 ¶ 80 (1996).

Importantly, resellers would have to do very little to comply with the 911 and E911 requirements. It would appear, for example, that a reseller of a CMRS licensee that has deployed a network-based Phase II solution would have to do nothing to ensure it is complying with the rules. A reseller of a CMRS licensee that has deployed a handset-based Phase II solution would at most have to sell Phase II-compatible handsets. Obviously, a reseller's 911 obligations would extend only to those activities that are under its control (*e.g.*, sale of compliant handsets). As the Commission ruled recently in a related context:

[R]esellers' responsibility under CALEA should be limited to their own facilities and they are not . . . responsible for the CALEA compliance responsibilities of the carrier whose service they are reselling with respect to the latter's underlying facilities.<sup>14</sup>

Sprint understands that resellers of CMRS licensees using the handset solution may require time to transition their handset inventory to Phase II-compatible handsets. Moreover, the business plans of resellers may not permit them to transition their inventory as quickly as licensees are being required to do. The Commission should permit resellers to establish reasonable conversion schedules, acknowledging that this is a new requirement that may have a significant impact on the business plans of these relatively small entities.

**B. THERE IS NO BASIS IN LAW OR POLICY TO IMPOSE ON LICENSEES THE OBLIGATION TO ENSURE THAT RESELLERS COMPLY WITH FCC RULES**

Resellers are telecommunications carriers, and the Commission historically has imposed on resellers the same regulatory obligations imposed on facilities-based telecommunications carriers (*e.g.*, CALEA compliance, number utilization and reporting rules, payment of regulatory fees).<sup>15</sup> This precedent suggests that resellers should be independently responsible for complying with the FCC's E911 rules – at least for those activities under their own control. The Com-

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<sup>14</sup> *Second CALEA Reconsideration Order*, 16 FCC Rcd 8959, 8970 ¶ 35 (2001).

<sup>15</sup> *See, e.g., Second CALEA Reconsideration Order*, 16 FCC Rcd 8959 (2001); *Universal Service Order*, 12 FCC Rcd 8776, 9179 ¶ 787 (1997). *Third NRO Order*, 17 FCC Rcd 252, 278 n.151 (2001).

mission nonetheless asks in the *Further NPRM* whether it should impose on CMRS licensees the obligation to ensure that resellers comply with the FCC's E911 rules:

[W]e could require the underlying facilities-based licensee to ensure that its resellers offer basic and E911 service compatible with its method of providing these services. . . . For example, if the obligation is placed on the underlying facilities-based licensee, and that licensee has chosen to meet its obligation through deploying a handset-based solution, should the reseller's handsets be counted towards the licensee's compliance obligations as detailed in our rules?<sup>16</sup>

There is no basis in law for the Commission to impose on one telecommunications carrier the responsibility to ensure that another, unaffiliated telecommunications carrier – *which competes with the licensee's own services* – complies with FCC rules. Simply put, there is no possible circumstance where the Commission could successfully prosecute an enforcement action against a CMRS licensee because an unaffiliated competitor did not comply with FCC rules.

There is also no basis in policy to impose an "ensure resellers comply with FCC rules" requirement on licensees. While licensees have some ability to establish the terms under which a reseller provides its services *via* contracts, in the end, a licensee's ability to control the conduct of a competitor is limited. For example, while a licensee could require a reseller to submit periodic reports concerning the number of Phase II compliant handsets a reseller has sold, it would be virtually impossible for a licensee to certify to the Commission that the information a reseller submitted to it was accurate.

Imposing an "ensure resellers comply with FCC rules" requirement on licensees would also vastly increase the licensee's costs in dealing with resellers. While licensees could recover these increased fees in the form of higher prices to resellers, resellers would understandably prefer to have control over their own compliance costs rather than have such costs dictated to them by one of their competitors. In addition, a licensee faced with the prospect of higher resale

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<sup>16</sup> *Further NPRM* at ¶ 95.

transaction costs and a risk of a new exposure to legal liability may simply decide that the most prudent course is to stop dealing with resellers. While resellers are not a significant competitive force in the wireless market (according to FCC data, they serve at most 5% of all CMRS customers<sup>17</sup>), any benefits resellers provide would be lost.

Indeed, imposing an obligation on licensees to ensure that resellers comply with E911 rules would affirmatively harm the public interest. Even during the time that the CMRS resale rule was in effect, the Commission held that licensees should not be required to sell handsets to resellers because such a requirement would “discourage marketing strategies that reduce costs to consumers.”<sup>18</sup> Yet, as a practical matter, the only way that a licensee could ensure that a reseller complies with the Commission’s E911 handset requirements would be to require *via* contract that the reseller purchase handsets only from the licensee – the very activity the Commission has determined would be contrary to the public interest.

#### IV. DEVICES

The Commission seeks comment on the extent to which its 911 and enhanced 911 rules should be extended to Personal Data Assistants (PDAs) with voice capacity or other new data-centric devices introduced in the wireless context. As wireless carrier networks grow into third generation technologies, many new devices will be introduced which do not fit neatly within the traditional concept of a wireless handset. To the extent such devices support traditional voice services, it may be reasonable to impose 911 and enhanced 911 requirements. As with MSS providers and Resellers, however, the Commission must acknowledge that issues of technical feasibility may impact the timeline within which such devices will support advanced E911 ser-

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<sup>17</sup> See *Further NPRM* at ¶ 93. Reseller market share is likely far less than five percent given the subsequent decision by the largest reseller, WorldCom, to exit the market.

<sup>18</sup> See *First CMRS Resale Reconsideration Order*, 14 FCC Rcd 16340, 16353-54 ¶ 29 (1999), *aff’d*, 15 FCC Rcd 16221 (2000).



vices and provide manufacturers and carriers some flexibility in reaching the Commission's ultimate goals.

Given the potential variety of data-centric devices, and the particular features and limitation of each, the Commission may also be required to assess the application of 911 service rules on a device-by-device basis, both to determine customer expectations and technical feasibility. Once the Commission has determined that E911 is technically feasible and desirable in light of customer expectations, it must then permit manufacturers a reasonable timeframe within which to adjust for this additional engineering specification and carriers a reasonable interval to address existing intervals.

For example, air-cards (a form of wireless modem) currently operate on wireless networks and provide data only services. In the future, however, consumers might choose to use such data transmissions to carry voice traffic. If this occurs, the Commission will need to determine whether customers have a reasonable expectation that such data-centric devices will be capable of providing advanced E911 services and whether such devices are technically capable of providing E911 service. If the Commission determines that E911 obligations should be extended to such devices, it would undoubtedly be sometime before the air cards, as well as the laptop computers for which they are designed, can be engineered to support GPS location services. Manufacturers will need time to make appropriate adjustments and service providers will need time to clear existing inventories.

Similarly, PDA devices and compact computing devices are primarily designed to provide data functions such as synchronization with daily planner programs, reviewing e-mails, transmitting files or manipulating documents. These data functions are supported using a different type of chip set from that used in traditional handsets. While manufacturers are in the process of developing chip sets that will provide both data services and GPS functionality in the same

device, the integration of these new technologies will take some amount of time. If the Commission extends its rules to include such data devices in the future, it must also provide a reasonable timeframe for manufacturers to complete this development cycle and clear existing inventories.

## V. CONCLUSION

Sprint agrees that 911 and enhanced 911 services provide an important benefit to the public and should be extended to MSS and Resale operations. However, Sprint again reminds the Commission of the complexity of this technology and the need to impose rational requirements and timelines. To the extent the Commission seeks to extend 911 obligations to devices other than handsets, it should first assess the technical feasibility of such services and then provide manufacturers a reasonable timeframe within which to make modifications to their devices.

Respectfully submitted,

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February 19, 2003